

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5449 OF 1998

1. Mr. Vyankat Ramchandra	)
Pawar.	)
	)
2. Mr. Sanjay Motiram Pawar)	)
	)
3. Mr. Anandrao Ramchandra	)
Pawar deceased through his heirs)	)
and legal representatives :	)
	)
3A. Rajendra Anandrao Pawar	)
	)
3B. Mohan Anandrao Pawar	)
	)
All adults, Occupation	)
Agriculturists, all residing	)
at Village Atit, Taluka and	)
District Satara.	)...Petitioners.

V/s

1. Special Land Acquisition	)
Officer No.4, Satara,	)
District Satara.	)
	)
2. District Resettlement	)
Officer, District Satara	)
	)
3. Revenue Commissioner,	)
Pune.	)
	)
4. State of Maharashtra	)....Respondents.

Mr. R.A. Thorat for the petitioners	
Ms. S.S. Bhende, AGP for the State.	

**CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.**

DATE: 13th October, 2005.

JUDGMENT: (Per V.M. Kanade, J.)

1. By this Petition, petitioners are challenging the acquisition proceedings in respect of the land bearing Gat No.1293 under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (hereinafter called "the Rehabilitatin Act") read with the provisions of the Land Acquisition Act, 1894

(hereinafter called "the Acquisition Act").

2. The only grievance of the petitioners is that prior to the issuance of notification under section 11 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (hereinafter called "the Resettlement Act"), an application was made by the petitioners on 10/08/1980 for partition of the land bearing Gat No. 1293 and that this application was allowed by the Circle Officer, Nagathane on 29/08/1980. It is contended that since the land was partitioned prior to the issuance of notification under section 11, their individual holding, after partition, ought to have been taken into consideration which, admittedly, was below the slab of 2 Hectares and 42 Ares. It is, therefore, submitted that the land of the petitioners is not liable to be acquired.

3. The State has filed an affidavit of Shankar B. Gonjari, Tahsildar (Resettlement), who was working in the Office of the Collector, Satara District. The Tahsildar has admitted in the said affidavit in para 6 that, in fact, the application had been preferred by the petitioners for partition on 10/08/1980 and it was allowed by the Circle Officer on 29/08/1980. He has stated that though this fact was pointed out by the District Resettlement Officer and the recommendation was made by him for cancellation of the said proposed acquisition, his recommendation was not considered.

4. It is a settled position in law that after notification under section 11 of the Rehabilitation Act is issued, there is a restriction on any kind of transfer or partition of land under section 12 of the said Act. In this case, however, the admitted position is that prior to the issuance of section 11 notification, the partition was effected and the same was accepted by the Circle Officer on 29/08/1980, which was before issuance of notification under section 11. The notification under section 11(1) of the Resettlement Act was published on 02/07/1981. In our view, therefore, the acquisition proceedings will have to be quashed as they are contrary to the provisions of the Rehabilitation Act which prohibit

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acquisition of the land below the slab which is declared as 2 Hectares and 42R. In the present case, since the individual holding of the petitioners is below the said slab, the acquisition will have to be quashed.

5. In the result, notifications issued by the Government under section 4 and 6 of the Acquisition Act are quashed and set aside. Writ Petition is allowed in the above terms.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)